THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XVII, No. 16 APRIL, 1947 PAGES 301-320

COMPLETE NUMBER 335

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Unlicensed Foreign Corporations

Limitation Upon Their Use of Federal Courts

In *Angel v. Bullington*, decided by the Supreme Court of the United States on February 17, 1947; 67 S. Ct. 657, the court referred to a line of cases, of which *David Lupton's Sons Co. v. Automobile Club of America*, 225 U. S. 489, decided in 1912, was one, as "obsolete insofar as they are based on a view of diversity jurisdiction."

In that case an unlicensed foreign corporation, doing business in New York, was permitted to maintain an action in a New York federal court on a contract made in New York, in spite of the fact that the law of New York denied such a corporation the right to maintain suit on the contract in the New York state courts.

In the *Angel v. Bullington* case, the Supreme Court said:

> "Cases like *David Lupton's Sons v. Auto Club of Am.*, 225 U. S. 489, are obsolete insofar as they are based on a view of diversity jurisdiction which came to an end with *Erie Railroad v. Tompkins*, 304 U. S. 64. That decision drastically limited the power of federal district courts to entertain suits in diversity cases that could not be brought in the respective state courts or were barred by defenses controlling in the state courts. Compare *Suydam v. Broadnax*, 14 Peters 67, 75. Of course, where resort is had to a federal court not on grounds of diversity of citizenship but because a federal right is claimed, the limitations upon the courts of a state do not control a federal court sitting in the state. *Holmberg v. Armbrecht*, 327 U. S. 392."

The *Angel v. Bullington* case did not involve a foreign corporation, but it did involve the question of the right of a non-resident to sue in a federal court, under circumstances where the non-resident could not, under the state law, prevail or sue in the state courts.

The overruling, by the highest court, of the rule it had laid down in the *David Lupton's Sons Co.* case appears to close the federal courts, sitting in certain states, to a foreign corporation, which, while unlicensed and carrying on intrastate business, enters into a contract within the state relating to that business, which it seeks to enforce, even though the corporation is subsequently authorized to do business in the state. States in this classification are Alabama, Arizona, Arkansas, Idaho, Iowa, Michigan, Mississippi, Missouri, New Jersey (as to corporations incorporated in the other states in this group), New York, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin and Wyoming.

In a second group, under state law, an unlicensed foreign corporation which enters into a contract within the state while doing intrastate business there, must first obtain authority to do business before it can enforce such a contract in the state courts. No doubt a similar suspension of the right of enforcement in the federal courts until qualification is effected may be anticipated under the *Angel v. Bullington* decision. The states in this group are California, Colorado, Connecticut, Florida, Illinois,

Indiana, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey (as to corporations incorporated in the other states in this group), New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington and West Virginia.

In the remaining seven states, there appear to be no statutory provisions restricting the right of unlicensed foreign corporations, doing business in the state, to enforce their contracts in the state courts. These states are Delaware, Georgia, Kansas, Kentucky, Nebraska, North Carolina and South Carolina.

Domestic Corporations

California.

Dividend which was improperly declared, held ratified by corporation. A dividend was declared upon defendant's common stock at a special meeting of defendant's board of directors attended by only four of its seven directors. No notice of the meeting was given to the directors as required by statute, nor did the absent directors sign a waiver of notice or a consent to the meeting or an approval of its minutes as required by law. Plaintiff was then vice-president of the corporation as well as one of its directors and was present at the meeting. The dividend was paid in cash to all holders of common stock, but the seven directors who were also holders of such stock, immediately returned their dividends to the corporation and received in exchange promissory notes in amounts equal to their respective dividends. This action was brought to recover upon the note given to plaintiff. The defendant corporation contended the declaration of the dividend was invalid and that the note was issued without consideration. The Supreme Court of California affirmed a judgment of the Superior Court which had found that any irregularity in the declaration of the dividend had been ratified and confirmed by the corporation, entering judgment for the plaintiff. The higher court noted that all of the seven notes had been carried as notes payable upon subsequent financial statements of the corporation and that one had been paid. It regarded this evidence as supporting the finding of the trial court that the irregularity of the resolution declaring the dividend had been cured by subsequent ratification of the dividend and indicated that, since ratification has a retroactive effect, "the dividend must be regarded as authorized by the board of directors as of the time when it was declared, and thus, plaintiff did not acquire the note without consideration." *Meyers v. El Tejon Oil & Refining Co.*, 174 P. 2d 1. Kendall, Howell & Deadrich of Bakersfield and Roy P. Dolley and Arthur B. Knight of Los Angeles, for appellant. Calvin H. Conron, Jr., of Bakersfield, for respondent.

Delaware.

Where a receiver and counsel were appointed by the court, the services of counsel for stockholders' committees were held not subject to compensation from corporate funds. The Court of Chancery, New Castle County, recently ruled upon petitions for allowances to a receiver for a holding company and his counsel and to others who claimed to have rendered services in connection with a receivership. The receiver and his attorney, being agents of the court were ruled entitled to reasonable compensation for their services and to reimbursement for incidental necessary expenses. Counsel for a preferred stockholders' committee sought an allowance from corporate funds for legal services rendered, while counsel for a minority common stockholders' committee sought an allowance from corporate funds for legal services and the repayment of a small amount for out-of-pocket expenses incurred, the individuals composing both committees having been permitted to intervene in the action. The court, after an examination of the nature of the services rendered, disallowed these claims for legal services from corporate funds and indicated such counsel "must look to their employers for compensation." The court remarked that when a receiver is appointed and represented by competent counsel, there is ordinarily no reason for any independent participation in the administration of the estate by stockholders of the insolvent corporation, or by their representatives. "Voluntary services," continued the court, "amounting to a mere duplication of the efforts of the duly authorized agents of this court, no matter how meritorious, are, therefore, seldom compensable from corporate funds. Any different rule would naturally result in a waste of assets." *Veeder v. Public Service Holding Corporation*, Court of Chancery, New Castle County, February 10, 1947. Clair J. Killoran, the receiver, and C. Stewart Lynch, his solicitor, appeared in person. Henry A. Haugh, Jr., et al., preferred stockholders, acting as a Preferred Stockholders' Committee, by Reuben Golin of Hahn & Golin, of New York. Philip H. Graham, et al., minority common stockholders, acting as a committee for that class of stock, by Richard S. Rodney, then of Morris, Steel, Rodney, Nichols & Arsht of Wilmington, and Arthur W. Countryman, Jr., of Shipman & Goodwin of Hartford, Connecticut. Public Service Holding Corporation by Daniel J. Layton of Georgetown, Albert L. Simon of Wilmington and Samuel Hershenstein of New York. Arthur G. Logan of Wilmington, for Amos Treat & Co., et al. Commerce Clearing House Court Decisions Requisition No. 368474.

Michigan.

Complaint dismissed where plaintiff was a member of defunct non-profit corporation, whose functions had been taken over by a new company, the defendant, which had not acquired the assets of the old company. Plaintiff was a member of a Michigan non-profit corporation, organized in 1916, the charter of which was voided about the year 1933. In November, 1942, a non-profit non-stock corporation

of the same name was incorporated as a result of a meeting of the members of the defunct company. Plaintiff did not consent, took no part in the new corporation and was not a member of it. The new company listed the assets of the old company as its assets, although no transfer took place. Plaintiff, as a member of the older company, sought a determination that the new company, the defendant, had no estate or interest in certain realty or personalty which the older company had owned, that title was still in plaintiff's corporation and to enjoin defendant permanently from asserting any claim adverse to his company. The Supreme Court of Michigan noted that, under the decisions, there was no merger of the two corporations and that it could not be said that the new corporation was a reorganization of the old company. "The new corporation," continued the court, "was a separate and different corporation from the old corporation. As the old corporation did not transfer its assets to the new corporation, the defendant corporation has no title or interest in the property in question." However, the court pointed out that plaintiff, not having made a request to the officers and directors of the old corporation to begin suit against the new corporation, did not come within the exception to the rule that a stockholder may not invoke the intervention of a court without request for action by the corporate officers and refusal by such officers to act, unless the officers are disqualified by misconduct equivalent to a breach of trust, or occupy a relation which prevents an unprejudiced exercise of judgment, and therefore that a request for action would be futile. A decree dismissing plaintiff's bill of complaint was affirmed. *Ruzitz v. Serbian National Home Society*, 24 N. W. 2d 125. Duncan C. Beath of Detroit, for plaintiff. Ivan A. Marohnic of Detroit, for defendant and appellee.

New York.

Beneficiary under will held not a holder of record of shares, standing in name of the estate, so as to prosecute derivative action on behalf of corporation or to claim deprivation of pre-emptive rights. The complaint contained three causes of action, the first two being brought by the plaintiff in a derivative capacity, and the third charging deprivation of her pre-emptive rights to purchase a pro rata share of a new issue of stock. The defendants moved for an order dismissing the complaint on the ground that the plaintiff lacked legal capacity to bring the action. Her interest in the corporation arose under her husband's will, by the terms of which she was bequeathed certain of his stockholdings. She elected, however, under provisions of the Decedent Estate Law, to take the share of a spouse of an intestate in lieu of the testamentary provision. Plaintiff conceded that at the time of the commencement of the action and at all times mentioned in the complaint the stock in question was registered on the books of the company in the name of the "Estate of Henry H. Law" and that the executor, who was not a party plaintiff or defendant, had actual legal title. She claimed that she was, nevertheless, the "equitable and beneficial" owner and that this interest established her right to insti-

tute an action in the capacity of a stockholder. The New York Supreme Court, Special Term, Part III, upheld defendants' contention that plaintiff lacked legal capacity because she was not a stockholder at the time the transaction complained of took place, as required by Section 61 of the General Corporation Law and refused to agree with plaintiff's contention that an amendment of Section 61 overruled prior cases holding that a person interested as a beneficiary, legatee or otherwise in an estate which holds certain stock of a corporation is not a stockholder entitled to bring suit for or against the corporation. As to the third cause of action, concerned with plaintiff's alleged deprivation of pre-emptive rights, the court concluded that plaintiff was not a holder of record shares, as required by statute, and directed judgment dismissing the complaint. *Law v. Alexander Smith & Sons Carpet Co., et al.*, 66 N. Y. S. 2d 187. Rogers & Coudon of New York City, for plaintiff. Appleton, Rice & Perrin of New York City, for defendants. Commerce Clearing House Court Decisions Requisition No. 361954.

Pennsylvania.

Petition by beneficial owner of stock of merged corporation dismissed where there was a failure to comply with statute governing appraisal of stock. This appeal involved construction of Section 908 of the Business Corporation Act, as amended. "The Act," said the Supreme Court of Pennsylvania, "provides a remedy for the protection of a dissenting stockholder against a corporate merger and prescribes the method of procedure. The *shareholder* (defined in the act as the *registered owner*), in order to secure the benefit of the provisions of the statute, must do three things: (a) File a written objection to the merger; (b) refrain from voting in favor of the merger; (c) make written demand for the fair value of his shares." The appellant, Era Company, Ltd., was the beneficial owner of 250 shares of the stock of the Pittsburgh Coal Company. The stock was registered in the name of C. A. England and Company. Prior to a stockholders' meeting at which a proposed merger of this company with another coal company was to be voted upon, the Pittsburgh Coal Company received a letter from a New York trust company, stating that "a valued client," whose name was not given, owned 250 shares, which were identified by number, which the client wished to vote against the merger proposals, noting that the certificates were registered in the name of the trust company's nominee and that a proxy, voting against the proposals, was sent separately. The proxy was signed by the registered owner. Subsequently, after the approval of the merger by a majority of the stockholders, C. A. England and Company, the registered owner, made demand for the payment of the fair value of 250 shares of the stock. The appellant, the beneficial owner, then filed a petition for the appointment of appraisers. The court below decided that appellant was not a registered holder entitled to relief within the terms of the act. This decree was affirmed by the Supreme Court of Pennsylvania, which

also ruled that the petition failed to show compliance with the act. Referring to the trust company's letter, the court remarked: "The corporation was under no duty to ignore its stock registry and pass upon the equitable ownership of the shares. An objection by an alleged agent of an undisclosed principal cannot be regarded as that made by the *registered owner*. The corporation properly ignored such an irregular objection. The petition by the alleged beneficial owner for an appraisement and payment of fair value, likewise is not the act of the *registered owner* as required by the act." *Era Co., Limited v. Pittsburgh Consolidation Coal Co.*, 49 A. 2d 342. John E. Evans, Sr., and Evans, Evans & Spinelli of Pittsburgh, for appellant. Earl F. Reed, Thorp, Bostwick, Reed & Armstrong and James A. Bell of Pittsburgh, for appellee.

Foreign Corporations

California.

Nevada corporation, dissolved through failure to file Nevada report and pay filing fee, held not entitled to sue in California after expiration of three-year period fixed for winding up corporate affairs. "Plaintiff, a Nevada corporation," said the District Court of Appeals, Third District, "appeals from an adverse judgment in an action to quiet title to certain real property which plaintiff allowed to be sold to the state for taxes, and which thereafter was sold by the state to defendant. Defendant now has moved to dismiss said appeal on the ground that the plaintiff is without capacity to sue or prosecute the same by reason of the fact that prior to the commencement of this action its charter was revoked and has not been reinstated by the State of Nevada for failure to pay certain corporate taxes in that state." The Nevada corporation, organized in 1929, had been authorized to do business in California in 1936. It forfeited its right to do business there in 1938 through failure to pay its California franchise tax. Having failed to pay the property taxes on the premises in question, the property was sold in 1942 to the state, which gave defendant a tax deed in 1943. However, in 1938, plaintiff's Nevada charter had been revoked for failure to file a required list of officers, directors, etc. and pay the filing fee in that connection and the charter had never been reinstated. The three year period provided by the Nevada law for the settlement of the business of a corporation whose charter has expired had passed several years before the institution of the suit in 1944. The District Court of Appeals granted a motion to dismiss the appeal. It found that the Nevada statute which had worked a revocation of plaintiff's charter had brought about "an automatic forfeiture of plaintiff's charter prior to the commencement of this action" and concluded that plaintiff had no right to institute the proceeding or to appeal from an adverse decision. *Fidelity Metals Corporation v. Risley et al.*, 175 P. 2d 592. Tebbe & Correia and Floyd Merrill of Yreka, for appellant. Buffum & Postlethwaite of Yreka and Robert H. Schwab of Sacramento, for respondents.

New York.

Mere affiliation of defendant through common parentage with a corporation having its office in New York ruled not equivalent to doing of business which would support service of process upon defendant. The New York Supreme Court, Special Term, New York County, in granting a motion to vacate service of process upon a foreign corporation, said: "The defendant is an airline in Honduras which operated exclusively in Central America. Less facts are shown here for holding that the defendant is amenable to service than demonstrated in *Dineen v. United States Airlines Transport Corp.*, 166 Misc. 422, 2 N. Y. S. 2d 567, where it was held that the corporation was not doing business here. The fact that the Honduran Company is affiliated through common parentage with another corporation having its office in New York does not mean that the defendant corporation is doing business here. *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333, 45 S. Ct. 250, 69 L. Ed. 634; *Compania Mexicana v. Compania Metropolitana*, 250 N. Y. 203, 164 N. E. 907, affirming 223 App. Div. 346, 228 N. Y. S. 36." *Savadge v. Transportes Aereos Centro Americanos*, 66 N. Y. S. 2d 280. Baar, Bennett & Fullen (Herbert S. Camitta and Charles T. Russell, of counsel), of New York City, for plaintiff. Reed, Truslow, Crane & De Give (William G. Mulligan, Edward T. O'Brien and Milton Kaplan, of counsel), of New York City, for defendant.

Washington.

Service of process upon driver of stage operated by Canadian company on detour in state, where no passengers were received or discharged, ruled void. Relator, a Dominion of Canada corporation, applied to respondent Washington superior court for a writ of prohibition to prevent it from taking jurisdiction of an action against relator in that court, in which the cause of action arose in British Columbia. The plaintiffs in that suit were all residents of Washington. Respondent's only connection with the State of Washington was the use of eighty miles of road along the Canadian border at times when the parallel roads in British Columbia, ordinarily used, were impassable. Three stages used the eighty miles in this way and service of process in the superior court suit was made upon one of the drivers of the stages while using the detour mentioned. Relator neither took on or discharged passengers while in the state. It held a certificate for the operation of the stage from the state in the nature of a certificate of convenience and necessity to furnish interstate passenger service. A bond was posted and insurance secured to the state as in the case of other common carriers of passengers by motor vehicles. The superior court, after argument on a motion to quash the service orally announced it regarded relator as doing business in the state, that the driver was a proper agent upon whom service could be made and it overruled the motion. The application for the writ of prohibition to the Supreme Court of Washington was

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then made. That court reached a contrary conclusion and ruled that the writ was to issue, prohibiting the trial court from signing the order denying the motion to quash the service of summons and further prohibiting that court from proceeding further in the case. The court viewing the service upon the driver as not made upon an agent as is contemplated by the statute, regarded the service as void and the superior court as not acquiring jurisdiction. It did not pass upon the question as to whether or not, relator, in using the highways of the state, was in fact doing business there. *State ex rel. Western Canadian Greyhound Lines, Ltd. v. Superior Court for King County*, 175 P. 2d 640. Ballinger, Hutson & Truscott of Seattle, for relator. Mifflin & Mifflin of Seattle, for respondents.

Taxation

Montana.

As to additional initial fees, law which determines rate is that in effect at time increased capital stock is represented in Montana. Plaintiff New Jersey corporation was qualified to do business in Montana in 1916. At that time it paid fees prescribed by Section 1 of Chapter 37, Laws of 1915. In 1945, it filed a report which indicated an increase in the proportion of its capital stock represented in the state during the preceding year over that on which fees had previously been paid. Plaintiff contended that the fees upon the increase were to be computed according to the 1915 law mentioned. This law had been supplanted by a 1923 statute which had repealed all acts and parts of acts in conflict with it. Subsequent enactments replaced this 1923 law, the latest being Chapter 169, Laws of 1931. The defendant Secretary of State demanded fees according to the 1931 law, which plaintiff had paid under protest and sought to recover. "The question involved," said the Montana Supreme Court, "is whether the additional fee of plaintiff corporation must be measured by the rate provided in Chapter 37, Laws of 1915, as contended by plaintiff or by the rate provided in Chapter 169, Laws of 1931 (now sec. 145.4) as contended by defendant." The court ruled in favor of the defendant Secretary of State, remarking: "It is the law in effect at the time the increased capital stock is represented by Montana business and property that measures the amount of the fee," and that "the additional fee must be calculated on the basis of the proportion of capital stock in Montana as shown by the report and reckoned as if the corporation, as to the excess capital in Montana, were filing its charter or a certificate of increased capital stock at the time of filing the report." *Great Western Sugar Co. v. Mitchell, Secretary of State*,* 174 P. 2d 817. R. V. Bottomly, Attorney General, and Clarence Hanley, Asst. Atty. General, for appellant. Gunn, Rasch & Gunn of Helena, for respondent.

* The full text of this opinion is printed in the **State Tax Reporter, Montana**, page 3811.

Ohio.

Inter-company accounts of Ohio manufacturing company, active in two states, arising from dealings with its subsidiary sales company, active in many states, held to have a situs in Ohio for franchise tax allocation purposes. Appellant was an Ohio corporation, manufacturing pianos in Ohio. It disposed of all its pianos through a subsidiary which also had its principal office in Ohio and was authorized to do business in at least forty states. Generally, orders for pianos desired by ten divisional offices of the subsidiary were sent direct to the appellant. In some instances, however, dealers, who were customers of the subsidiary, obtained pianos from the divisional office. In others, they communicated with the subsidiary and pianos ordered would be sent by the appellant to the dealers pursuant to a consignment contract under which title remained in the subsidiary. The question was whether the decision of the Board of Tax Appeals was unreasonable or unlawful in holding that all business done by the appellant was Ohio business, for franchise tax allocation purposes, and holding that all appellant's accounts receivable, as represented by its inter-company transactions with the subsidiary, should be given an Ohio situs. The Ohio Supreme Court affirmed the decision of the Board, ruling that, as it was conceded appellant was authorized to do business outside of Ohio only in the state of Illinois, there was no basis for the theory that sales of pianos were made from warehouses operated by appellant in other states. The inter-company accounts between appellant and the subsidiary were regarded as constituting accounts receivable owned and used by the appellant in Ohio and as having a situs there. *Baldwin Co. v. Glander*,* 70 N. E. 2d 885. William J. Rielly of Cincinnati, for appellant. Hugh S. Jenkins, Attorney General, and Darrone R. Tate and Aubrey A. Wendt of Columbus, for appellee. Commerce Clearing House Court Decisions Requisition No. 367480.

* The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 1386.

Where an Ohio corporation maintains general bank deposits outside of Ohio which are used in transacting its business generally in a number of states, such bank deposits are taxable in Ohio. The Sheffield Steel Corporation, an Ohio company, was engaged in manufacturing at plants in Missouri and Oklahoma. Consolidated personal property returns were filed by its parent company, The American Rolling Mill Co., in which the bank deposits of the Sheffield Company, which were maintained in Missouri and Oklahoma, were shown as being outside Ohio and as not taxable in that state. Upon an audit of the returns, the Tax Commissioner made amended assessments and established the situs of such deposits in Ohio for taxation purposes, and this finding was confirmed by the Board of Tax Appeals. The latter decision was affirmed by the Ohio Supreme Court, which found statutory support for such a ruling, observing: "The evidence produced would indicate that the bank deposits in con-

troversy were used in Sheffield's business outside the states of Missouri and Oklahoma, and, although they were withdrawable by Sheffield's officers in those states, they may justifiably be classed as general reserves or balances maintained for the purposes of the corporation's entire business wherever transacted, within the purview of provisions of Section 5328-2, General Code, thus rendering the deposits taxable in Ohio, the situs of Sheffield's incorporation." The court laid down "the rule that where it is demonstrated that a corporation organized and existing under the laws of Ohio maintains general bank deposits outside Ohio which are used by it in transacting its business generally in a number of states, such bank deposits are taxable in this state by the application of Sections 5328-1 and 5328-2, General Code. All statutes granting exemption from taxation must be strictly construed. In the absence of statutes exempting the deposits involved in this case, they are subject to taxation in this state. Under the maxim, *'mobilia sequuntur personam,'* personal property outside Ohio, when owned by a resident of Ohio, is taxable in Ohio. The decision of the Board of Tax Appeals being neither unreasonable nor unlawful is affirmed." *American Rolling Mill Co. et al. v. Evatt,** 70 N. E. 2d 651. Dargusch, Caren, Greek & King of Columbus, for appellants. Hugh S. Jenkins, Attorney General, and Aubrey A. Wendt, of Columbus, for appellee. Commerce Clearing House Court Decisions Requisition No. 365966.

* The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 2621.

South Carolina.

Contractor, having administrative office in city imposing contractors' license tax and doing no construction work there, ruled subject to city's license tax on contractors. Respondent, a general contractor, who constructed highway and railroad bridges, overpasses and underpasses and did other work of a like nature, sought to recover a license or occupation tax paid under protest to the appellant city. He carried on this work in various sections of South Carolina and in other states, but never carried on any actual construction work in the city. In 1939, he established a central office in a building owned by him in the city, where books and records were kept, business appointments made, bids on projects prepared and contracts executed and other administrative work performed. All equipment when not in use was stored in this building. The county court had permitted a recovery of the tax, regarding the ordinance imposing it as excluding the respondent because he had not engaged in contracting, from which he received revenue, within the city and that the city was attempting to levy a tax on contracting work done in other municipalities, which was beyond its power. The Supreme Court of South Carolina reversed the order of the lower court, holding the activities of respondent within the city as essential functions of the general contracting business and concluding that the ordinance applied to the business of the respondent, remarking: "We find

no reasonable justification for a construction of this ordinance which would make the liability for the payment of a license contingent upon *all* of the functions of the taxpayer's business being performed within the City of Chester." *Triplett v. City of Chester et al.,** 40 S. E. 2d 684. Charles W. McTeer of Chester, for appellants. J. Means McFadden of Chester, for respondent.

* The full text of this opinion is printed in the **State Tax Reporter,** South Carolina, page 7518.

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 1025. *Smith v. Hydro Gas Co. of West Florida, Inc. et al.,* 157 F. 2d 809. (The Corporation Journal, March, 1947, page 286.) Service of process—withdrawn foreign corporation—cause of action arising in another state subsequent to withdrawal. **Petition for certiorari filed, February 13, 1947.**

NEW YORK. Docket Nos. 29-30. *Carter & Weekes Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.,* 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946. Restored to the docket and assigned for reargument before a full bench, April 22, 1946. Reargued, November 12, 1946. Affirmed, March 10, 1947.**

OKLAHOMA. Docket No. 831. *Fleming et al. v. Oklahoma Tax Commission,* 157 F. 2d 888. (The Corporation Journal, March, 1947, page 288.) Recovery of state income taxes—foreign corporation—applicability of formula for computation of tax. **Petition for certiorari filed, December 30, 1946. Certiorari denied, February 3, 1947. Petition for rehearing denied, March 3, 1947.**

* Data compiled from **CCH U. S. Supreme Court Service 1946-1947.**

Regulations and Rulings

CALIFORNIA—Sales and Use Tax Ruling No. 55 was recently amended to include a provision that the state sales tax does not apply to sales of property sold to foreign purchasers for shipment abroad and delivered to a ship, airplane or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States. (State Tax Reporter, California, ¶ 64-104.)

MARYLAND—The credit for domestic corporation franchise taxes payable during the taxable year allowed against income taxes refers to such franchise taxes actually paid during the income tax year. (Opinion of the Attorney General, State Tax Reporter, Maryland, ¶ 17-009.)

MISSOURI—National Banks are not required to file a return of income under the laws of Missouri relating to taxation of income. (Opinion of the Attorney General to the Director, Department of Revenue, State Tax Reporter, Missouri, ¶ 14-520.)

NEW YORK CITY—Gross Receipts Tax Regulation Article 106 has been revised to provide that any out-of-city business not maintaining an office within the City of New York which makes sales to persons within the city through an agent who, in consideration of additional compensation agrees to guarantee to his principal the solvency of the debtor and the practical discharge of the debt is not subject to the tax as to such sales. (State Tax Reporter, New York, ¶ 120-104.)

NORTH CAROLINA—The sales tax is a license or privilege tax for engaging in the business of a wholesale or retail merchant and the tax is due by the merchant even though he sells only five-cent articles. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 60-404.)

OKLAHOMA—A corporation which, in its original articles of incorporation made no provision for capital stock, is authorized to amend the articles to provide for capital stock, as Sec. 129, Tit. 18, O. S. 1941, does not prohibit such amendment. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Oklahoma, ¶ .003.)

TEXAS—Trucks stocked with groceries, and traveling from house to house, from which sales are made, are stores within the meaning of the Chain Store Tax Law, in that such trucks or trailers are "mercantile establishments in which goods, wares and merchandise" are sold. (Opinion of the Attorney General, Texas State Tax Reporter, ¶ 48-511.)

WYOMING—The basis for the collection of the annual license tax from corporations, provided by Sec. 28-1001, Wyoming Revised Statutes, 1931, may be properly ascertained by adding the assessed value of the property when assessed, to the actual value of the capital, property and assets not actually assessed. (Opinion of Deputy Attorney General, State Tax Reporter, Wyoming, ¶ 1500.)

Some Important Matters for April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to citizens or residents of Delaware during 1946.

DISTRICT OF COLUMBIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MARYLAND—Annual Report (Personal Property Return) due on or before April 15.—Domestic Corporations.

Franchise Tax Report and Franchise Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

MARYLAND (Continued)

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MISSOURI—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW JERSEY—Franchise Tax Report and Tax due on or before April 30.—Domestic and Foreign Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

OREGON—Excise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before April 30.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Income Tax due June 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

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THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK 5, N. Y.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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